

## Internal Revenue Service

Number: **200741005**

Release Date: 10/12/2007

Index Number: 355.01-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B02

PLR-112895-07

Date:

July 12, 2007

### Legend:

Parent =

Controlled =

Distributing 1 =

Distributing 2 =

Sub 1 =

Sub 2 =

Target =

Tempco 1  
through Tempco 9 =

New Legal Entity

Classification =

Contributed Assets =

X =

Business 1 =

Business 2 =

Date 1 =

Dear :

This responds to a letter dated March 7, 2007, submitted on behalf of Parent, requesting a ruling under § 355 of the Internal Revenue Code and related rulings. Additional information was received in letters dated March 15, 2007, April 4, 2007, June 19, 2007, and June 22, 2007.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding whether either of the Distributions described below: (i) satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and Treas. Reg. § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50% or greater interest in the distributing corporation or the controlled corporation (see § 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

## **SUMMARY OF FACTS**

The material information is summarized below.

Parent is the common parent of an affiliated group of corporations that join in the filing of a consolidated federal income tax return. Distributing 2 is a wholly-owned direct

subsidiary of Parent. Distributing 2 was formed by Parent in contemplation of the Date 1 Merger described below. Sub 1 is a wholly-owned direct subsidiary of Parent engaged in Business 2. Sub 2 is a wholly-owned subsidiary of Sub 1 engaged in Business 1. Distributing 1 is a wholly-owned subsidiary of Distributing 2.

On Date 1, Target merged into Distributing 2 with Distributing 2 surviving. (The "Date 1 Merger.") Parent has represented that the Date 1 Merger qualified as a reorganization under § 368(a)(1)(A) by reason of § 368(a)(2)(D) of the Internal Revenue Code. The former shareholders of Target received Parent stock and cash in the Date 1 Merger.

Distributing 1 is engaged in Business 1 and Business 2. Financial information has been submitted indicating that Business 1 and Business 2 have each had gross receipts and operating expenses representing the operation of a trade or business for each of the past five years.

For what has been represented to be a valid business purpose, Parent proposes the following series of transactions:

1. Distributing 1 will form ten subsidiaries: Tempco 1 through Tempco 9 and Controlled.
2. In exchange for all the common stock of each of Tempco 1 through Tempco 9 and Controlled, Distributing 1 will contribute the Contributed Assets to each Tempco and Controlled (the "Contribution"). The Contributed Assets consist of Distributing 1's Business 2 assets and additional assets. X will be segregated based on geography and X will be contributed to the entity in the applicable jurisdiction.
3. Each of Tempco 1 through Tempco 9 and Controlled will convert to their New Legal Entity Classification.
4. Following the conversions described in 3 above, each Tempco will merge with and into Controlled with Controlled as the surviving entity.
5. Distributing 1 will distribute all the outstanding Controlled common stock to Distributing 2 (the "First Distribution").
6. Distributing 2 will distribute all of the outstanding Controlled common stock to Parent (the "Second Distribution"). The First Distribution and the Second Distribution may collectively be referred to as the "Distributions."
7. Controlled will merge with and into Sub 1 with Sub 1 surviving (the "Post-Distribution Merger"). The Post-Distribution Merger is intended to qualify as a reorganization under § 368(a)(1)(A) of the Code.

Additionally, and for business reasons unrelated to those motivating the First Distribution and the Second Distribution, Sub 1 may distribute Sub 2 to Parent, which may then contribute Sub 2 to Distributing 2 (the "Potential Contribution").

## **REPRESENTATIONS**

### **Steps 1 - 4**

Parent has made the following representations with respect to the steps 1 through 4 described above:

(a) The formation of each of Tempco 1 through Tempco 9, the conversion of each of Tempco 1 through Tempco 9 into its New Legal Entity Classification, and the subsequent merger of each of Tempco 1 through Tempco 9 with and into Controlled will occur solely for the purpose of facilitating the Distributions.

(b) Each of Tempco 1 through Tempco 9 will be formed and merged with and into Controlled without engaging in any business activities other than those necessary to effectuate the mergers and the Distributions described above.

(c) Controlled will acquire all of the assets and will assume all of the liabilities of each of Tempco 1 through Tempco 9 and the separate corporate existence of each of Tempco 1 through Tempco 9 will cease upon the completion of step 4 described above.

### **The First Distribution**

Parent has made the following representations with respect to the First Distribution:

(d) No intercorporate debt, other than debt incurred in the ordinary course of business and potential indebtedness included in the Contributed Assets, will exist between Distributing 1 and Controlled at the time of, or subsequent to, the First Distribution. Any indebtedness owed by Controlled to Distributing 1 after the First Distribution will not constitute stock or securities.

(e) No part of the consideration to be distributed by Distributing 1 in the First Distribution will be received by Distributing 2 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.

(f) The financial information submitted on behalf of Business 1 and Business 2, including the five years of financial information for each of such businesses, represents the present operations of each business, and regarding each business, there have been no substantial operational changes since the submission of the financial information.

(g) Following the First Distribution, Distributing 1 will continue the active conduct of Business 1, and Controlled (and following the Post-Distribution Merger, Sub 1) will directly continue the active conduct of Business 2, independently and with their respective separate employees. None of Distributing 1, Controlled, or Sub 1 has any plan or intention to reduce business activity for any of their respective businesses after the Distributions.

(h) The First Distribution will not be used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled or both.

(i) Each of the total adjusted bases and the fair market value of the assets transferred, or treated as transferred (see Ruling 1 below), to Controlled by Distributing 1 equals or exceeds the sum of the liabilities assumed by Controlled plus any liabilities to which the transferred assets are subject; and the liabilities assumed in the transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.

(j) For purposes of § 355(d), immediately after the First Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50% or more of the total value of all classes of Distributing 1 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the First Distribution.

(k) For purposes of § 355(d), immediately after the First Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50% or more of the total value of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the First Distribution or (ii) attributable to distributions on Distributing 1 stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the First Distribution.

(l) Payments made in all continuing transactions between Distributing 1 and Controlled or between Distributing 1 and Sub 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(m) The First Distribution is not part of a plan or series of transactions (within the meaning of § 1.355-7), other than the series of transactions which includes the Date 1 Merger, pursuant to which one or more persons will acquire directly or indirectly stock representing at least a 50% or greater interest (within the meaning of § 355(d)(4)) in

Distributing 1, Distributing 2, or Controlled (including any predecessor or successor of any such corporation).

(n) The First Distribution is being carried out for the following corporate business purpose: to facilitate the Second Distribution.

(o) If any property is transferred by Distributing 1 to Controlled with respect to which an investment credit determined under § 46 has been or will be claimed, Distributing 1 represents that the income tax liability for the taxable year in which investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of the property.

(p) Immediately before the First Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6 and as currently in effect; § 1.1502-13 as published by T.D. 8597). The excess loss account of Distributing 1 with respect to Controlled common stock, if any, will be included in income immediately before the First Distribution.

### The Second Distribution

Parent has made the following representations with respect to the Second Distribution:

(q) No intercorporate debt, other than debt incurred in the ordinary course of business and potential indebtedness included in the Contributed Assets, will exist between Distributing 2 and Controlled at the time of, or subsequent to, the Second Distribution. Any indebtedness owed by Controlled to Distributing 2 after the Second Distribution will not constitute stock or securities.

(r) Neither Parent nor any security holder of Distributing 2 will transfer or surrender to Distributing 2 any property in the Second Distribution.

(s) The financial information submitted on behalf of Business 1 and Business 2, including the five years of financial information for each of such businesses, represents the present operations of each business, and regarding each business, there have been no substantial operational changes since the submission of the financial information.

(t) Following the Second Distribution, the Distributing 2 separate affiliated group will continue the active conduct of Business 1, and Controlled (and following the Post-Distribution merger, Sub 1) will directly continue the active conduct of Business 2,

independently and with their respective separate employees. None of Distributing 2, Controlled, or Sub 1 has any plan or intention to reduce business activity for any of their respective businesses after the Distributions.

(u) The Second Distribution will not be used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled or both.

(v) For purposes of § 355(d), immediately after the Second Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50% or more of the total value of all classes of Distributing 2 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Second Distribution.

(w) For purposes of § 355(d), immediately after the Second Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50% or more of the total value of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Second Distribution or (ii) attributable to distributions on Distributing 2 stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Second Distribution.

(x) Payments made in all continuing transactions between Distributing 2 and Controlled or between Distributing 2 and Sub 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(y) The Second Distribution is not part of a plan or series of transactions (within the meaning of § 1.355-7), other than the series of transactions which includes the Date 1 Merger, pursuant to which one or more persons will acquire directly or indirectly stock representing at least a 50% or greater interest (within the meaning of § 355(d)(4)) in Distributing 1, Distributing 2, or Controlled (including any predecessor or successor of any such corporation).

(z) The Second Distribution is being carried out for the following corporate business purpose: to facilitate the Post-Distribution Merger which, in turn, will: (i) meaningfully reduce Parent's burden in complying with regulatory requirements and other applicable laws; (ii) create operating efficiencies by making it easier to create and enforce unified technology, marketing, and employment policies throughout the company; (iii) facilitate the use of assets and information across all operating regions; and (iv) improve customer transparency and convenience. The Second Distribution is motivated, in whole or substantial part, by this corporate business purpose.

(aa) Immediately before the Second Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6 and as currently in effect; § 1.1502-13 as published by T.D. 8597. The excess loss account of Distributing 2 with respect to Controlled common stock, if any, will be included in income immediately before the Second Distribution.

#### Additional Representations

Parent has made the following representations in connection with the proposed series of transactions, including the Post-Distribution Merger:

(bb) Taking into account Target's ownership prior to the Date 1 Merger, Distributing 2 has owned all the equity interests in Distributing 1 for the five-year period preceding the date of the First Distribution.

(cc) Treating the assets of Distributing 1, Distributing 2, and Controlled that are otherwise defined as investment assets but that are held in order to ensure positive net equity on each entity's balance sheet as excluded from the definition of investment assets by virtue of § 355(g)(2)(B)(ii), immediately after the transaction (as defined in § 355(g)(4)), none of Distributing 1, Distributing 2, or Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

(dd) Neither Distributing 1 nor Distributing 2 will accumulate its receivables nor make extraordinary payment of its payables in anticipation of the First Distribution or the Second Distribution.

(ee) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(ff) The fair market value of the Sub 1 stock and other consideration received by Parent will be approximately equal to the fair market value of the Controlled stock surrendered in the exchange.

(gg) Sub 1 has no plan or intention to reacquire any of its stock issued in the transaction.

(hh) Sub 1 has no plan or intention to sell or otherwise dispose of any of the assets of Controlled acquired in the transaction, except for dispositions made in the ordinary course of business or transfers described in § 368(a)(2)(C).



(ii) The liabilities of Controlled assumed by Sub 1 and the liabilities to which the transferred assets of Controlled are subject were incurred by Controlled (or its predecessor Distributing 1) in the ordinary course of its business.

(jj) Following the transaction, Sub 1 will continue the historic business of Controlled and its predecessor Distributing 1 or use a significant portion of Controlled's and Distributing 1's historic business assets in a business.

(kk) Sub 1 and Parent will pay their respective expenses, if any, incurred in connection with the transaction. As Controlled was newly-formed in connection with the transactions, Parent will provide the necessary funds to effectuate the Post-Distribution Merger.

(ll) There is no intercorporate indebtedness existing between Controlled and Sub 1 that was issued, acquired, or will be settled at a discount.

(mm) Controlled is not under the jurisdiction of court in a title 11 or similar case within the meaning of § 368(a)(3)(A).

(nn) The fair market value of the assets of Controlled transferred to Sub 1 will equal or exceed the sum of the liabilities assumed by Sub 1 plus the amount of liabilities, if any, to which the transferred assets are subject.

## **RULINGS**

### **The Contribution**

Based solely on the information submitted and the representations made, we rule as follows with respect to the Contribution:

1. The formation of each of Tempco 1 through Tempco 9, the conversion of each Tempco into its New Legal Entity Classification, and the subsequent merger of each Tempco with and into Controlled will be disregarded for federal tax purposes and will be integrated and treated as if Distributing 1 had contributed the Contributed Assets to Controlled as part of a transaction qualifying as a reorganization under § 368(a)(1)(D).

2. Distributing 1 will not recognize any gain or loss on the Contribution (§ 361(a) and § 357(a)).

3. The aggregate basis of Distributing 1 in the Controlled stock received in exchange for the Contributed Assets will be equal to the basis of Distributing 1 in the Contributed Assets immediately before the Contribution, reduced by the liabilities assumed by Controlled from Distributing 1 (§ 358(a) and (d)).

4. Controlled will not recognize any gain or loss on its receipt of the Contributed Assets from Distributing (§ 1032(a)).

5. Controlled's basis in the Contributed Assets will be equal to the basis of Distributing 1 in the Contributed Assets immediately before the Contribution (§ 362(a)).

6. The holding period of Controlled in the Contributed Assets received from Distributing 1 will include the period during which Distributing 1 held those assets (§ 1223(2)).

#### The First Distribution

Based solely on the information submitted and the representations made, we rule as follows with respect to the First Distribution:

7. The Contribution and the First Distribution, taken together, will qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing 1 and Controlled will each be "a party to a reorganization" within the meaning of section 368(b).

8. Distributing 1 will recognize no gain or loss on its distribution of Controlled common stock to Distributing 2 in the First Distribution (§ 355(c)(1)).

9. Distributing 2 will recognize no gain or loss upon its receipt of the Controlled common stock from Distributing 1 in the First Distribution (§ 355(a)(1)).

10. The basis of Distributing 2 in the Distributing 1 common stock and Controlled common stock after the First Distribution will equal the basis of the Distributing 1 common stock that Distributing 2 held immediately before the First Distribution, allocated between the Distributing 1 common stock and the Controlled common stock in proportion to their relative fair market values at the time of the First Distribution in accordance with § 1.358-2(a)(2) (§ 358(c) and § 1.1502-19).

11. Distributing 2's holding period in the Controlled common stock received in the First Distribution will include the holding period of the Distributing 1 common stock with respect to which the First Distribution is made (§ 1223(1)).

12. Distributing 1 and Controlled will allocate their earnings and profits in accordance with §§ 312(h), 1.312-10(a), and 1.1502-33(f)(2).

13. The assets of Distributing 1, Distributing 2, and Controlled that are otherwise defined as investment assets but that are held for use in the active and regular conduct of Business 1 (in the case of Distributing 1 and Distributing 2) and Business 2 (in the case of Controlled) will be excluded from the definition of investment assets by virtue of § 355(g)(2)(B)(ii).

### The Second Distribution

Based solely on the information submitted and the representations made, we rule as follows with respect to the Second Distribution:

14. Distributing 2 will recognize no gain or loss on its distribution of Controlled common stock to Parent in the Second Distribution (§ 355(c)(1)).

15. Parent will recognize no gain or loss upon its receipt of the Controlled common stock from Distributing 2 in the Second Distribution (§ 355(a)(1)).

16. The basis of Parent in the Distributing 2 common stock and Controlled common stock after the Second Distribution will equal the basis of the Distributing 2 common stock that Parent held immediately before the Second Distribution, allocated between the Distributing 2 common stock and the Controlled common stock in proportion to their relative fair market values at the time of the Second Distribution in accordance with § 1.358-2(a)(2) (§ 358(c) and § 1.1502-19).

17. Parent's holding period in the Controlled common stock received in the Second Distribution will include the holding period of the Distributing 2 common stock with respect to which the Second Distribution is made (§ 1223(1)).

18. Distributing 2 and Controlled will allocate their earnings and profits in accordance with §§ 312(h), 1.312-10(b), and 1.1502-33(f)(2).

### The Post-Distribution Merger

Based solely on the information submitted and the representations made, we rule as follows with respect to the Post-Distribution Merger:

19. Parent will not recognize gain or loss upon the merger of Controlled with and into Sub 1 (§ 368(a)(1)(A) and § 354(a)).

20. Sub 1 will not recognize gain or loss upon the merger of Controlled with and into Sub 1 (§ 1032).

21. Parent's basis in the stock of Sub 1 received in the exchange will be the same as the Parent's basis in the Controlled stock surrendered in the exchange (§ 358).

22. Sub 1's basis in the assets of Controlled will be the basis of the assets in Controlled's hands immediately before the Post-Distribution Merger (§ 362(b) and § 1.362-1).

23. The Post-Distribution Merger will not preclude the application of § 355(e)(2)(C).

### The Potential Contribution

Based solely on the information submitted and the representations made, we further rule as follows:

24. The Potential Contribution will not affect the tax treatment of the First Distribution or the Second Distribution.

### **CAVEATS**

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

We express no opinion about the tax treatment of the proposed transactions under other provisions of the Code and the regulations or the tax treatment of any conditions at the time of, or effects resulting from, the proposed transactions that are not specifically covered by the above rulings. In particular, we express no opinion regarding:

(i) Whether either the First Distribution or the Second Distribution satisfies the business purpose requirement of § 1.355-2(b);

(ii) Whether either the First Distribution or the Second Distribution is being used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled or both, or of Distributing 2, as applicable (see § 355(a)(1)(B) and § 1.355-2(d)); or

(iii) Whether either the First Distribution or the Second Distribution and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

### **PROCEDURAL STATEMENTS**

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

---

Gerald B. Fleming  
Senior Technician Reviewer, Branch 2  
(Corporate)